IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12528 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAMALDAN JUVARDAN GADHAVI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 12528 of 2002

MR MC BAROT for Petitioner No. 1

RULE SERVED for Respondent No. 1,3

MS NANDINI JOSHI, AGP for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu has challenged the detention order dated 21st October,

2002. By the said order, the petitioner is detained as a Bootlegger under Prevention of Anti Social Activities Act, 1985. The order of detention is challenged by the petitioner by way of this petition.

2. The activity of the petitioner is highlighted in the detention order. There is reference of 1 criminal case which is pending against the petitioner under the Bombay Prohibition Act.

3. It is alleged against the petitioner that he is transporting illicit liquor. In the detention order, the detaining authority has stated that in connection with the aforesaid criminal case, the petitioner has already been given police remand by the District Magistrate on 21st October, 2002 and investigation is going on. Looking to the nature of the said offence and looking to the quantity which the petitioner was alleged to have transported, prima facie, he is involved in serious offence under Bombay Prohibition Act and, therefore, he was given police remand as mentioned by the District Magistrate in the detention order. However, the detaining authority has not stated that even though the petitioner is arrested in connection with the aforesaid criminal case, whether it is necessary to detain him under preventive detention. The detaining authority has not stated that the petitioner is likely to be released on bail. Atleast when the person is already arrested in connection with criminal case, the detaining authority is required to state as to why, still it is necessary to detain such person under the preventive detention. Nothing in the detention order is mentioned about the aforesaid aspect.

4. The learned advocate for the petitioner has relied upon the decision of the Apex Court in the case of Amritlal and others V. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 Supreme Court 3675 wherein it is observed as under:-

" ... ...

4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of

detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

5. Since the detaining authority has not stated anything in the order as to why it is necessary to detain

the petitioner even though he is in judicial custody and he has even not stated that the petitioner is likely to be released on bail. The order of detention is required to be quashed and set aside.

6. On the aforesaid view of the matter, the petition succeeds and the same is allowed. The order of detention under challenge is quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to cost. Direct service is permitted.

(P.B.Majmudar,J)

Jayanti*